



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

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Attorney General

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**MEMORANDUM**

**TO: VICTORIA P. SIMMONS**  
Regulatory Coordinator  
Department of Medical Assistance Services

**FROM: PAIGE S. FITZGERALD**  
Special Counsel to DMAS

**DATE: December 24, 2003**

**SUBJECT: Proposed Regulations concerning Methods and Standards for Establishing Payment Rate—Long Term Care Services: Ownership Criteria for Fair Rental Value**

I am in receipt of the proposed regulations concerning changes to payment methodology for long term care services. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. This regulation sets out changes to the reimbursement of long-term care services; specifically, it sets limits regarding the sales of nursing facilities when the conversion to fair rental value may occur. Federal regulations, specifically 42 C.F.R. § 447.252, require each State plan to “specify comprehensively the methods and standards used by the agency to set payment rates” for long-term care facility services. In addition, 42 U.S.C. § 1396a(a)(13) requires that the

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payment methodologies for nursing facilities be set out in the State plan. This amended regulation will provide specific direction to participating nursing facilities of DMAS' reimbursement methodologies relating to the conditions under which the conversion to fair rental value may occur, upon the sale of a nursing facility.

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment